



State of Utah

Department of  
Environmental  
Quality

Dianne R. Nielson, Ph.D.  
*Executive Director*

DIVISION OF SOLID &  
HAZARDOUS WASTE  
Dennis R. Downs  
*Director*

OLENE S. WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

April 14, 2004

Joseph Gearo, Director  
Environmental Programs  
Dugway Proving Grounds  
Dugway, Utah 84405-5000

Re: Stipulation and Consent Order No. 0401001

Dear Mr. Gearo:

Please find enclosed a copy of the Stipulation and Consent Order (SCO) between Dugway Proving Grounds (Dugway), the Utah Hazardous Waste Control Board (the Board), and the Product Manager for Nonstockpile Chemical Demilitarization (Nonstockpile) to implement the Explosive Destruction System (the Plan) at Dugway. This SCO will allow for implementation of the Plan by the Army to safely treat chemical agent from Igloo G.

The SCO was presented as an informational item to the Board on April 8, 2004. A public comment period for the SCO began April 13, 2004, when the public notice was published in the Salt Lake Tribune, the Deseret News, and the Tooele Transcript. The public comment period will close on May 12, 2004. It is expected that the Board will take action on the SCO at the May 13, 2004 Board Meeting.

If you have any questions, please contact or Marty Gray or Doug Taylor of my staff at (801) 538-6170.

Sincerely,

**Original Document Signed by Dennis R. Downs on 4/14/04**

Dennis R. Downs, Executive Secretary  
Utah Solid and Hazardous Waste Control Board

DRD/DWT/kk

[Attachment](#)

c: Myron Bateman, E.H.S., M.P.A., Health Officer, Tooele County Health Department  
TN200400438.doc

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

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In the Matter of:

STIPULATION AND  
CONSENT ORDER

Dugway Proving Grounds - Owner:  
Product Manager for Non-Stockpile Chemical Materiel - Operator  
UT3750211259

No: 0401001

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This **STIPULATION AND CONSENT ORDER (SCO)** is issued by the UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD (the Board) pursuant to the Utah Solid and Hazardous Waste Act (the Act), Section 19-6-101, et seq., Utah Code Annotated 1953, as amended (UCA).

**JURISDICTION**

1. The Board has jurisdiction over the subject matter of this SCO pursuant to 19-6-101 of the Act, and jurisdiction over the parties.

**FINDINGS**

2. Dugway Proving Grounds (Dugway) is a “person” as defined in UCA 19-1-103 (4) and is subject to all applicable provisions of the Act, R315 of the Utah Administrative Code (the Rules), the Part B Permit issued on March 16, 1994 (the Permit) and the Stipulation and Consent Order issued on September 13, 1990 (the Consent Order).
3. Dugway is owned and operated by the U.S. Army and is located in Tooele County, Utah. Dugway has the mission of conducting tests for chemical and biological defense; smoke defense and incendiary devices for the Department of Defense. Dugway owns and operates the Igloo G Hazardous Waste Storage Facility under the provisions of the Permit, which stores range recovered chemical munitions and non-stockpile chemical agent (P999). There are currently 15 range recovered munitions and seven Department of Transportation (DOT) cylinders of Chemical Warfare Agent stored in Igloo G. These waste munitions are classified as non-stockpile chemical materiel and are potentially unsafe and should be treated and disposed.

4. The Program Manager for Elimination of Chemical Weapons is responsible for destroying all United States chemical warfare materiel. The Product Manager for Non-Stockpile Chemical Materiel (PMNSCM) is responsible for destroying non-stockpile chemical materiel. The PMNSCM is a "person" as defined in UCA19-1-103 (4) and, when conducting hazardous waste management activities at Dugway, is subject to all applicable provisions of the Act and R315 of the Utah Administrative Code (the Rules), the Permit and the Consent Order.
5. The PMNSCM is the operator of the Explosive Destruction System (EDS) which is a technology developed to treat and detoxify non-stockpile chemical munitions in a totally enclosed treatment system rather than through open detonation.
6. Dugway and the PMNSCM, herein referred to as the Army, and the Executive Secretary of the Board have worked together to develop a plan for destruction of recovered chemical warfare materiel at Dugway Proving Ground, Utah using the Explosive Destruction System (the Plan). The Plan contains procedures for treating the waste munitions identified in Paragraph Three in a manner that is protective of human health and the environment, and in a manner consistent with hazardous waste interim status regulations R315-7.
7. The Army and the Board now wish to enter into a SCO to implement the Plan to treat the munitions.

### **STIPULATIONS**

8. For the purpose of this SCO, the parties agree and stipulate to the above stated facts. Other than Paragraph Seven above, none of the Stipulations herein shall be considered admissions by any party, and shall not be used by any person related or unrelated to this SCO for the purposes other than determining the basis of this SCO.
9. The Plan to treat the waste munitions identified in Paragraph Three is incorporated into the SCO as Attachment A: Plan for Destruction of Recovered Chemical Materiel at Dugway Proving Ground, Utah Using the Explosive Destruction System, Final Revision 2, March 2004.
10. The Internal and Standard Operating Procedures (SOP) for the EDS are incorporated into the SCO as Attachment B. The EDS Treatment Quality Assurance Project Plan (QAPP), Final Revision 2, March 2004, is incorporated as Attachment C. The Monitoring Detection Limits (MDL) are incorporated as Attachment D. The Quality Control Plan (QCP) for the Chemical Agent Standard Analytical Reference Material (CASARM) is incorporated as Attachment E. The Closure Strategy, Final, April 2004, is incorporated as Attachment F. Standard Operating Procedures 18, 19, 21, and 22 are incorporated as Attachment G.

## **CONSENT ORDER**

11. Based on the foregoing Findings and Stipulations, the parties hereby agree as follows:

12. The Army shall be subject to all applicable rules, permits, and the conditions of the SCO during the course of EDS operation.

13. EDS operational personnel shall treat the wastes identified in Paragraph Three of this SCO in accordance with Attachments A through E.

14. The monitoring action levels during EDS operations shall be 0.2 Chemical Control Limit/Time Weighted Average (CCL/TWA) on the filter exhaust and in the vapor containment system. Paragraph 25 shall govern any changes to these monitoring action levels.

15. The Army shall provide analytical laboratories receiving samples of F999 and P999/F999 hazardous waste generated by the EDS for waste characterization with a certification statement certifying that the waste sample contains less than 50 ppm of chemical agent for mustard and one ppm chemical agent for GB, and with a safety briefing for the analytical laboratory personnel which describes symptoms of chemical agent exposure and exposure treatment methodology.

16. All waste munitions treated by the EDS, and waste generated during the treatment process, shall be further treated using a destruction technology at a permitted offsite TSDF after the EDS treatment has been completed, and agent levels in the waste have been verified to be below treatment goals. The Army shall follow established Dugway procedures for managing agent contaminated carbon filters at commercial TSDFs.

17. Following completion of the work to be performed under this SCO, the Army shall submit to the Executive Secretary a written after action report. The after action report shall include the operating record developed during operation of the EDS, an identification and assessment of upset operations, and analytical data of samples taken from process waste streams and closure verification. The report shall include a written certification of completion by an independent Utah registered professional engineer (R315-7). Within thirty (30) days of receipt of the report, the Executive Secretary shall determine whether the Army has fulfilled all requirements and obligations under this SCO, including payment in full of State invoices in accordance with Paragraph 19, and shall notify the Army in writing of his determination. If the Executive Secretary determines that all provisions of this SCO have been fulfilled, the notice shall constitute completion of this SCO. In the event the Executive Secretary determines that all requirements of the SCO have not been met, he shall provide the Army with a written description of deficiencies within thirty (30) days of receipt of the after action report and certification. The Army shall notify the Executive Secretary within thirty (30) days of receipt of the deficiencies of activities to be undertaken to correct the deficiencies, and a timetable for completion of activities. Once all deficiencies have been corrected, the

Executive Secretary shall notify the Army in writing that all provisions of the SCO have been fulfilled.

18. The engineer certification of closure and associated analytical data may be submitted to the Executive Secretary independent of the after action report required by Paragraph 17. However, the EDS shall not be moved from Dugway until the Executive Secretary has approved the certification of closure and the supporting data and has inspected the EDS unit.

19. The Army shall reimburse the Executive Secretary for all reasonable costs for plan review and in overseeing compliance with this SCO. Upon execution of this SCO, the Executive Secretary shall submit quarterly invoices to the Army identifying the oversight and review costs of State employees in accordance with the fee collection schedule in the Utah Appropriations Act. The Army shall, within forty-five (45) days of receipt of each such invoice, remit a check to the State for the full amount of the costs, payable to:

Utah Department of Environmental Quality  
c/o Dennis Downs, Executive Secretary  
Utah Solid and Hazardous Waste Control Board  
P.O. Box 144880  
Salt Lake City UT 84114-4880

20. The Army will provide at least seven (7) days prior notice to the Executive Secretary of any activities pertaining to fieldwork associated with the plan. The Executive Secretary reserves the right to acquire split samples of process waste collected for analysis by the Army. The Army shall provide access to Dugway and the EDS upon request by the Executive Secretary's authorized representative(s) for the purpose of enforcing, monitoring, photographing, sampling, and observing activities conducted under this SCO.

21. The State or any of its employees, or any member of the Board or the Executive Secretary shall not be liable for any injury or damage to persons, property, or natural resources which result from acts or omissions by the Army or its agents or contractors in carrying out activities pursuant to this SCO. The Executive Secretary and his representatives shall comply with all reasonable requirements established by the Army for the protection of health, safety, and security while at the facility. Some of the activities conducted pursuant to this SCO may pose certain health and safety risks, which the Executive Secretary and the Army hereby acknowledge. The health and safety of Army personnel and/or its contractors are not the responsibility of the State, the Board, the Executive Secretary, or any of their agents and employees.

22. Except as provided in Paragraph 7 herein above, the Army, the Executive Secretary, the Board, or any entity of the State shall not be deemed to have waived any rights which it may otherwise exercise under applicable laws and administrative rules including, but not limited to, such actions as may be necessary to prevent pollution of

ground water, protect human health and environment, protect and maintain its natural resources, abate an imminent hazard or public nuisance, recover costs for the State expenditures, and/or recover damages for loss, destruction or replacement of natural resources. The Board shall not be precluded from initiating enforcement action, including seeking civil penalties, against the Army in the event of noncompliance with the Utah Solid and Hazardous Waste Act and applicable administrative rules or noncompliance with this SCO.

### **FORCE MAJURE**

23. Dugway's failure to meet or satisfy any requirements set out in this SCO shall be excused for a reasonable time to the extent the failure is caused by events beyond Dugway's control, including without limitation acts of God, public enemy, unforeseen strikes or work stoppages, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage or war.

24. Failure to obtain adequate funds or appropriations from Congress does not, in any way, release the Army from its obligation to comply with the Federal Facilities Compliance Act and applicable Utah statutes. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedule provided in this SCO, the Army shall have the opportunity to prove by a preponderance of the evidence that the lack of funding was beyond the reasonable control of the Army and could not have been overcome by due diligence. If the Army proves a lack of funding was beyond its control, the Army shall not be held liable for delays in meeting SCO deadlines. Nothing in this SCO shall be construed to require the United States Government or any of its instrumentalities to obligate funds in any fiscal year in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or any other fiscal law in Title 31 of the United States Code.

### **MODIFICATIONS**

25. This SCO contains the entire agreement between the parties hereto concerning the subject matters treated herein and may not be amended, supplemented, or modified except through a writing executed by both parties hereto. This SCO shall be binding on both parties, their respective successors and assigns all persons or entities acting under, through or for them. The Army consents to entry of this SCO and agrees to be bound thereby.

26. The Army may undertake changes to onsite equipment without modifying this SCO, provided that the changes meet the criteria of a Class I modification to a RCRA Part B Permit without prior approval. All other changes shall require modification of this SCO as required by Paragraph 25.

### **EFFECTIVE DATE**

27. This SCO shall become effective upon execution by Dugway Proving Grounds, the Product Manager for Non-Stockpile Chemical Materiel, and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

Dugway Proving Grounds

PMNSCM

By: \_\_\_\_\_  
Colonel Gary Harter, Commander

By: \_\_\_\_\_  
Lieutenant Colonel James P. Fletcher,  
Product Manager for Non-Stockpile  
Chemical Materiel

Utah Solid and Hazardous Waste Control Board

By: \_\_\_\_\_  
Dennis R. Downs, Executive Secretary

Dated this: \_\_\_\_\_ day  
of \_\_\_\_\_, 2004